

IN THE MATTER OF : BEFORE THE
HOME WAYS, INC. : HOWARD COUNTY
Petitioner : BOARD OF APPEALS
 : HEARING EXAMINER
 : BA Case No. 18-009V

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DECISION AND ORDER

On June 29, 2018, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Home Ways, Inc., (Petitioner) for a variance to reduce the required 30-foot setback from an arterial public street right-of-way to 15 feet for the construction of a single-family detached dwelling in the R-SC (Residential: Single Cluster) zoning district, filed pursuant to § 130.0.B.2.a of the Howard County Zoning Regulations (HCZR).

The Petitioner certified to compliance with the advertising and posting requirements of the Howard County Code. The Hearing Examiner viewed the property as required by the Hearing Examiner Rules of Procedure. Andrew Robinson, Esquire, represented the Petitioner. No one appeared in opposition to the petition.

Petitioner introduced into evidence Exhibit 1, a Revised Variance Plan showing the 30-foot setback from the 100-ft future ROW and the requested variance.

FINDINGS OF FACT

Based upon the evidence presented at the hearing, the Hearing Examiner finds as follows:

1. Property Identification. The subject property is located in the 2nd Election District. It

is identified as Tax Map 0037, Grid 0015, Parcel 158, and the address is 6324 Meadowridge Road, Elkridge, Maryland, (the Property).

2. Property Description. The irregularly-shaped .307-acre (13,372sf) Property is currently improved with a one-story single-family detached dwelling. Most of this dwelling sits within the future 100-foot Meadowridge Road right-of-way. According to the State Department of Assessments and Taxation records, the existing 539sf dwelling was built in 1940. The rear of the Property is wooded and slopes down to a 100-year floodplain, stream bank, and stream buffers. As the Hearing Examiner understands the Revised Variance Plan, the rear section of the dwelling would sit very close to the 75-foot stream buffer.

3. Vicinal Properties. The adjoining properties to the north, south, and west are each improved with a single-family detached dwelling. The properties to the east, across Meadowridge Road, consist of townhomes and a religious facility.

4. The Variance Request (§ 110.0.D.4.a.(l)(a)). Petitioner is requesting a variance to reduce the required 30-foot setback from an arterial public street right-of-way to 15 feet for the construction of a single-family detached dwelling.

CONCLUSIONS OF LAW

The standards for variances are contained in HCZR § 130.0.B.2.a. Pursuant to this section, the Hearing Examiner may grant a variance only if the Petitioner demonstrates compliance with all four variance criteria. Based upon the foregoing Findings of Fact, and for the reasons stated below, the Hearing Examiner finds the requested variance complies with §§ 130.0.B.2.a(1) through (4), and therefore may be granted.

(1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.

The first criterion for a variance is that there must be some unique physical condition of the property, e.g., irregularity of shape, narrowness, shallowness, or peculiar topography that results in a practical difficulty in complying with the particular bulk zoning regulation. This test involves a two-step process. First, there must be a finding that the property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). A “practical difficulty” is shown when the strict letter of the zoning regulation would “unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.” *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974).

With respect to the first prong of the variance test, the Maryland courts have defined “uniqueness” thus.

In the zoning context, the ‘unique’ aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. ‘Uniqueness’ of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to characteristics as unusual architectural aspects and bearing or party walls. *North v. St. Mary’s County*, 99 Md. App. 502, 514, 638 A.2d 1175 (1994) (*italics added*).

In the petition, the presence of the environmental features in the rear of the Property and its small size are unique physical conditions causing practical difficulty in complying strictly with the setback regulations, in accordance with HCZR § 130.B.2.a(1).

(2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

The requested variance is for a proposed 1,592sf single-family detached dwelling, which would sit back from the road at about the same distance as the adjoining northern residence. The requested variance will therefore not alter the essential character of the neighborhood or district or impairing the use or development of adjacent property. The petition complies with § 130.0.B.2.a(2).

(3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

The Petitioner did not create the practical difficulties, in accordance with § 130.0.B.2.a(3).

(4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

The proposed variance is for a reasonable use of the Property, a 1,592sf single-family detached dwelling, in accordance with § 130.0.B.2.a(4).

ORDER

Based upon the foregoing, it is this **14th Day of August 2018**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Home Ways, Inc., for a variance to reduce the required 30-foot setback from an arterial public street right-of-way to 15 feet for the construction of a single-family detached dwelling in the R-SC (Residential: Single Cluster) zoning district is **GRANTED**;

Provided, however, that:

1. The variance shall apply only to the uses and structures as described in the petition and as depicted on the Revised Variance Plan and not to any other activities, uses, structures, or additions on the Property.
2. The Petitioner shall obtain all required permits.
3. The Petitioner shall comply with all federal, state, and local laws and regulations.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**



Michele L. LeFavre

Date Mailed: _____

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.